IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA WESTERN DIVISION NO. 5:11-CV-28-H(2)

LORRAINE BES' HOME CARE, I	T and SUNSHINE NC.,)	
Plainti	ffs,)	
٧.)	
)	ORDER
THE BEACON C	ENTER,)	
Defendant.)	

This matter is before the court on return of a temporary restraining order entered against defendant, the Beacon Center, by the Superior Court of Wilson County, North Carolina and on plaintiffs' motion for a preliminary injunction to enjoin defendant from withdrawing plaintiffs' endorsement to provide Community Alternative Program services for individuals with mental retardation or developmental disabilities. A hearing was held on April 22, 2011, at which the parties and their counsel were present.

As noted at the hearing of this matter, the court questions whether plaintiffs' complaint, which was originally filed in state court and removed to this court upon defendant's motion, states a plausible claim for relief over which this court has jurisdiction. As a result, the court finds that plaintiffs have

not met their burden of establishing under <u>Winter v. Natural</u>

<u>Res. Def. Council, Inc.</u>, 555 U.S. 7 (2008), that they are entitled to a preliminary injunction pending a trial on the merits in this action.

Nevertheless, the court determines that the temporary restraining order entered by the state court should be continued in effect through May 13, 2011, in order to allow the state administrative agency to conduct the appeal hearing presently scheduled before it for May 2, 2011, and to give that administrative body an opportunity to rule on the merits of plaintiffs' appeal. This will also give plaintiffs an opportunity to amend their complaint to adequately state a plausible claim for relief, if any, under the federal procedural rules. If warranted, the court will consider at that time any further requests for preliminary injunctive relief.

The temporary restraining order entered on December 30, 2010, by Judge Milton Fitch, Jr., North Carolina Superior Court Judge, shall remain in effect through 11:59 p.m. on May 13, 2011, at which time the order will expire.

This 22nd day of April 2011.

MATICOLM IT HOWARD

Senior United States District Judge

At Greenville, NC #31